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TAGS: PFOR, CPRS, CS

SUBJECT: EXTRADITION - ROBERT VESCO

1. SUMMARY: THIS (1) DESCRIBES THE INDICTMENT AGAINST VESCO; (2) ASSESSES LEGAL ISSUES WHICH MIGHT ARISE IN AN EXTRADITION REQUEST REGARDING OUR EXTRADITION TREATY; (3) ASSESSES IMPLICATIONS OF THE VESCO LAW ON AN EXTRADITION REQUEST AS WE AND THE COSTA RICANS SEE IT BASED UPON OUR EXCHANGES OVER THE LAW; AND (4) PROVIDES OPTIONS FOR THE CONSIDERATION OF THE EMBASSY AND REQUESTS EMBASSY VIEWS.

2. INDICTMENT: THE INDICTMENT CHARGES VIOLATION OF THREE STATUTES -- 18 USC 2 (CONSPIRACY), 18 USC 1343 (WIRE FRAUD) AND 15 USC 77 J(B) (SECURITIES FRAUD). CONSPIRACY IS NOT EXTRADITABLE UNDER OUR TREATY WITH COSTA RICA. OUR TREATY MAKES EXTRADITABLE "FRAUD OR BREACH OF TRUST BY A ... DIRECTOR OR OFFICER OF ANY CORPORATION, OR BY ANY ONE IN ANY FIDUCIARY POSITION, WHERE THE AMOUNT OF MONEY OR THE
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VALUE OF THE PROPERTY MISAPPROPRIATED EXCEEDS TWO HUNDRED

DOLLARS." (ARTICLE II, PARAGRAPH 19). THE TREATY ALSO MAKES EXTRADITABLE "OBTAINING MONEY, VALUABLE SECURITIES OR OTHER PROPERTY BY FALSE PRETENSES ... WHERE THE AMOUNT OF MONEY OR THE VALUE OF THE PROPERTY SO OBTAINED ... EXCEEDS TWO HUNDRED DOLLARS," (ARTICLE II, PARAGRAPH 17). THE

INDICTMENT ADDRESSES TWO LARGE-SCALE TRANSACTIONS AND SOME MINOR ONES. THEY WILL BE DISCUSSED BELOW, SOLELY IN TERMS OF THE FACTS ALLEGED. WE HAVE NOT BEEN PROVIDED WITH ANY DOCUMENTATION BEYOND THE INDICTMENT TO EXPLAIN OR EXPAND UPON THE FACTS ALLEGED THEREIN.

A. THE KEY TRANSACTIONS IN THE INDICTMENT (COUNTS 2-5) ARE PREFACED BY EXPLANATORY SECTIONS TO PUT VESCO AND HIS CODEFENDANTS IN CONTEXT AND TO EXPLAIN THE BROAD OUTLINES OF THE SCHEMES. IT IS ALLEGED THAT, COMMENCING IN L970, VESCO HAD EFFECTIVE CONTROL OVER IOS AND ITS SUBSIDIARIES AND THE MANAGEMENT OF VARIOUS FUNDS REFERRED TO AS THE "DOLLAR FUNDS." IT IS ALLEGED THAT, ON OR ABOUT MAY 1972, VESCO AND THE OTHERS UTILIZED CONTROL OF THE DOLLAR FUNDS TO FRAUDULENTLY TRANSFER, MISAPPLY, AND MISAPPROPRIATE ASSETS OF THOSE FUNDS AND OTHER ENTITIES, IN EXCESS OF $100 MILLION, FOR THEIR OWN USE AND BENEFIT, FOR THE USE AND BENEFIT OF VARIOUS CORPORATIONS AND ENTITIES IN WHICH THEY HAD BENEFICIAL INTERESTS, AND CONTRARY TO THE INTERESTS OF THE MORE THAN 225,000 INVESTORS IN THE DOLLAR FUNDS.

B. THE INDICTMENT THEN ALLEGES HOW THE DEFENDANTS CARRIED OUT THEIR SCHEMES. IT IS ALLEGED THAT:

1. AFTER MAY 1972, THE DEFENDANTS CAUSED THE DOLLAR FUNDS TO CONVERT OVER $200 MILLION OF THEIR HOLDINGS IN SECURITIES INTO CASH, AND IN JUNE 1972 CAUSED ONE OF THE FUNDS (THE VENTURE FUND) TO FRAUDULENTLY TRANSFER $20 MILLION TO INVEST IN SECURITIES OF BAHAMIAN CORPORATIONS OSTENSIBLY OWNED BY DEFENDANT LABLANC.

2. DURING AUGUST 1972, THE DEFENDANTS CAUSED ANOTHER CONFIDENTIAL

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OF THE FUNDS, FOF PROPRIETARY LTD. (FOF PROP.), A SUBSIDIARY OF FUND OF FUNDS LTD. (FOF) TO FRAUDU-LENTLY TRANSFER $60 MILLION PURPORTEDLY FOR AN INVEST-MENT IN SECURITIES IN A COSTA RICAN CORPORATION, INTER-AMERICAN, WHOSE ASSETS THE DEFENDANTS CONTROLLED DIRECTLY AND INDIRECTLY;

3. DURING AND AFTER JUNE 1972 THE DEFENDANTS MISLED

EMPLOYEES, DIRECTORS, AUDITORS, AND ATTORNEYS OF THE DOLLAR FUNDS WITH RESPECT TO THE PURPOSE AND EFFECT OF THE TRANSACTIONS DESCRIBED ABOVE;

4. AFTER DECEMBER 1972 THE DEFENDANTS OBSTRUCTED EFFORTS OF OFFICIAL REPRESENTATIVES AND ATTORNEYS OF

THE DOLLAR FUNDS TO RECOVER MONIES THAT HAD BEEN TRANSFERRED; AND

5. DURING AND AFTER MARCH 1973 THE DEFENDANTS PROPOSED PLANS TO REORGANIZE CERTAIN OF THE DOLLAR FUNDS, IOS, AND ITS SUBSIDIARIES, WHICH WAS FOR THE PURPOSE OF CONFERRING BENEFITS ON THE DEFENDANTS.

C. COUNTS 2 AND 3 OF THE INDICTMENT ADDRESS IN DETAIL WHAT IS REFERRED TO AS THE "GLOBAL/VENTURE TRANSACTION." THIS TRANSACTION IS DESCRIBED AS FOLLOWS:

1. IT IS ALLEGED THAT PRIOR TO JUNE 1972 INTERNATIONAL CONTROLS CORPORATION (ICC), OF WHICH VESCO WAS THE PRINCIPAL STOCKHOLDER AND CHIEF EXECUTIVE OFFICER, OWNED IOS-RELATED ASSETS (STOCK IN VALUE CAPITAL LTD. AND INTERNATIONAL BANCORP LTD.). DURING 1971 AND 1972 THE SEC WAS INVESTIGATING WHETHER THE INVOLVEMENT OF ICC AND VESCO WITH IOS VIOLATED CERTAIN FEDERAL LAWS AND ORDERS (THE PARTICULAR LAWS AND ORDERS ARE NOT SPECIFIED IN THE INDICTMENT).

2. ON OR ABOUT JUNE 2, 1972 ICC SOLD ITS HOLDINGS IN VALUE CAPITAL AND INTERNATIONAL BANCORP TO GLOBAL FINANCIAL LTD., A BAHAMIAN CORPORATION OSTENSIBLY OWNED BY LEBLANC. AT THIS TIME, GLOBAL FINANCIAL HAD CONFIDENTIAL

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NO OPERATING ASSETS OR INCOME.

3. IN RETURN, ICC RECEIVED CERTAIN PROMISSORY NOTES FROM GLOBAL FINANCIAL. PAYMENTS ON THE NOTES WERE NOT SCHEDULED TO BEGIN FOR A YEAR. IF, HOWEVER, A "SPECIAL EVENT" OCCURRED, ALL THE NOTES WOULD BE IMMEDIATELY PAYABLE. THE "SPECIAL EVENT" WOULD OCCUR IF THIRD PARTIES PURCHASED A CERTAIN NUMBER OF SHARES OF STOCK IN GLOBAL HOLDINGS LTD., OF WHICH GLOBAL FINANCIAL WAS A WHOLLY-OWNED SUBSIDIARY.

4. AS PART OF A SCHEME TO DEFRAUD, THE DEFENDANTS, WITHOUT THE KNOWLEDGE AND AUTHORIZATION OF VENTURE FUND INVESTORS, CAUSED VENTURE FUND TO TRANSFER $20 MILLION (OVER 40 OF ITS ASSETS) TO PURCHASE, ON

TERMS UNFAIR TO VENTURE FUNDS AND ITS INVESTORS, A
NOT-READILY-MARKETABLE $10 MILLION DEBENTURE OF GLOBAL
FINANCIAL, AND 4 MILLION SHARES OF NOT-READILY-
MARKETABLE STOCK, FOR $10 MILLION, OF GLOBAL HOLDINGS.

5. VESCO CAUSED THIS TRANSACTION WITHOUT DISCLOSING
HIS PERSONAL INTEREST IN AND THE BENEFITS TO BE
DERIVED BY HIM, DIRECTLY AND INDIRECTLY, INCLUDING

THE BENEFITS TO BE DERIVED FROM THE IMMEDIATE
ACCELERATED PREPAYMENT TO ICC OF $7,350,000 ON THE
GLOBAL FINANCIAL NOTES.

6. AS PART OF THE SCHEME TO DEFRAUD, WITHIN 20 DAYS
AFTER THE "SPECIAL EVENT" PROVISION WAS INSERTED IN
THE JUNE 2, 1972 AGREEMENT BETWEEN ICC AND GLOBAL
FINANCIAL, THE DEFENDANTS CAUSED THE "SPECIAL EVENT"
TO TAKE PLACE BY CAUSING VENTURE FUND TO PURCHASE THE
4 MILLION SHARES OF STOCK. AS A RESULT, GLOBAL
FINANCIAL, OUT OF THE $10 MILLION RECEIVED FROM VENTURE
PAID$7,350,000 TO ICC. AS A RESULT, VESCO ARGUED THAT
ICC HAD MADE A PROFIT ON ITS SALE OF IOS ASSETS AND
THAT THE SEC NO LONGER HAD A BASIS TO CONTINUE ITS
INVESTIGATION OF HIM.

BASED ON THE FACTUAL ALLEGATIONS, THE STATUTORY ALLEGATIONS
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ARE TWO-FOLD:

A. THE DEFENDANT, IN PURPORTING TO ACT ON BEHALF OF
AND IN THE BEST INTERESTS OF VENTURE FUND, WILLFULLY
AND KNOWINGLY USED AND EMPLOYED A MANIPULATIVE AND
DECEPTIVE DEVICE AND CONTRIVANCE IN THAT THEY:

1) EMPLOYED A DEVICE, SCHEME, AND ARTIFICE TO
DEFRAUD;

2) MADE UNTRUE STATEMENTS OF MATERIAL FACTS; AND

3) ENGAGED IN AN ACT, PRACTICE, AND COURSE OF BUSI-
NESS WHICH OPERATED AS A FRAUD ON VENTURE FUND, ITS
OFFICERS, DIRECTORS, AND STOCKHOLDERS. (15 USC 78J(B))

B. WILLFULLY, AND KNOWINGLY, HAVING DEVISED A SCHEME
TO DEFRAUD, AND FOR OBTAINING MONEY AND PROPERTY FROM
VENTURE FUND BY MEANS OF FALSE AND FRAUDULENT PRE-
TENSES, AND FOR THE PURPOSE OF EXECUTING THE SCHEME,
TRANSMITTED AND CAUSED TO BE TRANSMITTED
CERTAIN WRITINGS AND CABLES. (18

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

USC 1343)

D. COUNTS 3 AND 4 OF THE INDICTMENT ADDRESS IN DETAIL WHAT IS REFERRED TO AS THE "INTER-AMERICAN TRANSACTION." THE TRANSACTION IS DESCRIBED AS FOLLOWS:

1. IT IS ALLEGED THAT AS PART OF A SCHEME TO DEFRAUD, IN JUNE 1972 THE DEFENDANTS CAUSED THE FORMATION OF INTER-AMERICAN, A COSTA RICAN CORPORATION. THE

DEFENDANTS THEN CAUSED THE TRANSFER OF $60 MILLION IN CASH FROM FOF PROP. (OVER 50 OF ITS ASSETS) TO BAHAMAS COMMONWEALTH BANK AND INTER-AMERICAN, UNDER THE PRETENSE OF A STOCK "INVESTMENT" BY FOF PROP. IN THE NON-VOTING SHARES OF INTER-AMERICAN.

2. IT IS ALLEGED THAT IN ORDER TO APPROPRIATE THE ASSETS OF FOF AND FOF PROP. FOR THE DEFENDANTS' PERSONAL USE AND BENEFIT, THE DEFANDANTS INITIATED AND CONFIDENTIAL

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EXECUTED THIS TRANSFER WITHOUT THE KNOWLEDGE AND AUTHORIZATION, AND ON TERMS UNFAIR TO, THE INVESTORS, DIRECTORS, OFFICERS AND EMPLOYEES OF FOF.

3. AS PART OF THE SCHEME TO DEFRAUD, ABOUT OCTOBER OR NOVEMBER 1972 THE DEFENDANTS, TO CREATE A FALSE IMPRESSION THAT FOF PROP. HAD MADE A LEGITIMATE INVESTMENT IN INTER-AMERICAN, CAUSED THE PREPARATION OF A FRAUDULENT PROSPECTUS, BACKDATED TO AUGUST 1972, WHICH MADE FALSE AND MISLEADING STATEMENTS OF MATERIAL FACTS.

4. ALSO AS PART OF THE SCHEME TO DEFRAUD, AND AFTER THE SEC HAD SOUGHT AN INJUNCTION AGAINST THE DEFENDANTS, THE DEFENDANTS, TO PERPETRATE THE FRAUD OF AN "INVESTMENT," CAUSED THE PRINTING OF STOCK CERTIFICATES PURPORTING TO ACKNOWLEDGE THE INVESTMENT.

BASED ON THE FACTUAL ALLEGATIONS, THE STATUTORY ALLEGATIONS ARE TWO-FOLD:

A. FROM ON OR ABOUT JUNE 1972 THE DEFENDANTS, WHILE PURPORTING TO ACT ON BEHALF OF AND IN THE BEST INTERESTS OF FOF AND ITS SUBSIDIARY FOF PROP. DID USE AND EMPLOY MANIPULATIVE AND DECEPTIVE DEVICE IN THAT THEY:

1) EMPLOYED A DEVICE, SCHEME AND ARTIFICE TO DEFRAUD;

2) MADE UNTRUE STATEMENTS OF MATERIAL FACTS AND

OMMITTED TO STATE MATERIAL FACTS; AND

3) ENGAGED IN AN ACT, PRACTICE AND COURSE OF BUSINESS WHICH OPERATED AS A FRAUD ON FOF, IOS AND CERTAIN OF ITS OFFICERS, DIRECTORS, AND INVESTORS. 15 USC 78J(B)

B. WILLFULLY AND KNOWINGLY, HAVING DEVISED A SCHEME TO DEFRAUD, AND FOR OBTAINING MONEY AND PROPERTY FROM FOF AND FOF PROP. BY MEANS OF FALSE AND FRAUDULENT PRETENSES, AND FOR THE PURPOSE OF EXECUTING THE SCHEME,

TRANSMITTED AND CAUSED TO BE TRANSMITTED CERTAIN CONFIDENTIAL

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WRITINGS AND CABLES. 18 USC 1343

E. THE INDICTMENT ALSO CHARGES VESCO, STRAUB AND STRICKLER WITH DEFRAUDING ICC OF $50,000 IN CASH IN CONNECTION WITH THE 1971 TAKEOVER BY VESCO OF IOS AND WITH GIVING FRAUDULENT AND MISLEADING TESTIMONY BEFORE THE SEC.

F. VESCO AND CLAY ARE ALSO CHARGED WITH DEFRAUDING ICC AND ITS SHAREHOLDERS WHEN THEY CAUSED ICC TO SELL ITS INTEREST IN VALUE CAPITAL LTD. IN JUNE 1972 THROUGH LEBLANC AT A PRICE AND ON TERMS UNFAIR TO ICC.

3. THE STATUTES

THE TEXTS OF THE STATUTES ARE AS FOLLOWS:

A. 18 USC 1343: "WHOEVER, HAVING DEVISED OR INTENDING TO DEVISE ANY SCHEME OR ARTIFICE TO DEFRAUD, OR FOR OBTAINING MONEY OR PROPERTY BY MEANS OF FALSE PRETENSES, REPRESENTATIONS, OR PROMISES, TRANSMITS OR CAUSES TO BE TRANSMITTED BY MEANS OF WIRE, RADIO, OR TELEVISION COMMUNICATION IN INTERSTATE OR FOREIGN COMMERCE, ANY WRITINGS, SIGNS, SIGNALS, PICTURES, OR SOUNDS FOR THE PURPOSE OF EXECUTING SUCH SCHEME OR ARTIFICE, SHALL BE FINED NOT MORE THAN $1,000 OR IMPRISONED NOT MORE THAN FIVE YEARS, OR BOTH."

B. 15 USC 78J(B): "IT SHALL BE UNLAWFUL FOR ANY PERSON, DIRECTLY OR INDIRECTLY, BY USE OF ANY MEANS OR INSTRUMENTALITY OF INTERSTATE COMMERCE OR OF THE MAILS, OR OF ANY FACILITY OF ANY NATIONAL SECURITIES EXCHANGE -- (B) TO USE OR EMPLOY, IN CONNECTION WITH THE PURPOSE OR SALE OF ANY SECURITY REGISTERED ON A NATIONAL SECURITIES EXCHANGE OR ANY SECURITY NOT REGISTERED, ANY MANIPULATIVE OR DECEPTIVE DEVICE OR CONTRIVANCE IN CONTRAVENTION OF SUCH RULES AND REGULATIONS AS THE COMMISSION MAY PRESCRIBE AS NECESSARY OR APPROPRIATE IN THE PUBLIC INTEREST OR FOR THE PRO-

TECTION OF INVESTORS."

1) THE RULES AND REGULATIONS REFERRED TO ARE PUBLISHED IN 17 CFR 240.10B-5 AND ARE AS FOLLOWS:

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"IT SHALL BE UNLAWFUL FOR ANY PERSON, DIRECTLY OR INDIRECTLY, BY THE USE OF ANY MEANS OR INSTRUMENTALITY OF INTERSTATE COMMERCE, OR OF THE MAILS OR OF ANY FACILITY OF ANY NATIONAL SECURITIES EXCHANGE,

(A) TO EMPLOY ANY DEVICE, SCHEME, OR ARTIFICE TO DEFRAUD,

(B) TO MAKE ANY UNTRUE STATEMENT OF A MATERIAL FACT OR TO OMIT TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING, OR

(C) TO ENGAGE IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECIT UPON ANY PERSON IN CONNECTION WITH THE PURCHASE OR SALE OF ANY SECURITY."

2) 15 USC 78J(B) IS A STATUTE THAT CAN BE USED BOTH CIVILLY AND CRIMINALLY. IF USED CRIMINALLY, THE PENALTY IS PROVIDED FOR IN 15 USC 78FF, THE OPERATIVE PART OF WHICH PROVIDES:

"ANY PERSON WHO WILLFULLY VIOLATES ANY PROVISION OF THIS CHAPTER, OR ANY RULE OR REGULATION THEREUNDER THE VIOLATION OF WHICH IS MADE UNLAWFUL OR THE OBSERVANCE OF WHICH IS REQUIRED UNDER THE TERMS OF THIS CHAPTER...SHALL UPON CONVICTION BE FINED NOT MORE THAN $10,000 OR IMPRISONED NOT MORE THAN TWO YEARS, OR BOTH..."

3) THE WORDING OF 78J(B) IS COMPLEX, AND THE STATUTE HAS RECEIVED COPIOUS INTERPRETATION IN THE COURTS. DECISIONS ON THE STATUTE HAVE STATED UNEQUIVOCALLY THAT THE PURPOSE OF SECTION (B) IS TO PROTECT BUYERS AND SELLERS OF SECURITIES FROM THOSE WHO DEAL UNFAIRLY WITH THEM, THAT THE SECTION PROHIBITS ALL FRAUDULENT SCHEMES IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES, WHETHER THE ARTIFICES EMPLOYED INVOLVE "A GARDEN TYPE VARIETY OF FRAUD OR PRESENT A UNIQUE FORM OF DECEPTION," THAT THE FRAUD MAY BE CONFIDENTIAL

ACCOMPLISHED, FOR EXAMPLE, BY FALSE STATEMENTS MADE, OR NOT STATING ANYTHING AT ALL WHEN THERE IS A DUTY TO SPEAK. IT HAS ALSO BEEN HELD THAT THE STATUTE IS APPLICABLE TO TRANSACTIONS IN FOREIGN SECURITIES OCCURRING OUTSIDE THE U.S.

4. LEGAL ISSUES WHICH MIGHT ARISE WITH RESPECT TO THE TREATY.

A. 18 USC 1343 DEPENDS FOR FEDERAL JURISDICTION ON USE OF INTERSTATE MAIL OR WIRE FACILITIES. VESCO ARGUED SUCCESSFULLY IN THE BAHAMAS THAT 18 USC 1343 WAS NOT A FRAUD STATUTE BUT A STATUTE PROHIBITING ILLEGAL USE OF THE WIRES. HE ALSO RAISED THAT ARGUMENT IN OUR FIRST ATTEMPT IN COSTA RICA. ALTHOUGH THE FIRST COSTA RICAN CASE WAS DECIDED ON OTHER GROUNDS, WE DO HAVE DICTA FROM THE JULY 23, 1973

DECISION OF THE SEGUNDA SALA THAT 1343 WAS INDEED A FRAUD STATUTE NO MATTER WHAT MEANS WERE USED TO PERPETRATE IT. THE EMBASSY'S TRANSLATION OF THE PERTINENT PART OF THAT DECISION WAS "FRAUD COMMITTED BY MEANS OF CABLES IS INCLUDED IN THE TREATY AND SANCTIONED UNDER COSTA RICAN LAW. IN BOTH THE TREATY AND THE LAW, THE REFERENCE IS TO FRAUD IN ITS GENERIC SENSE, COVERING AS A CONSEQUENCE WHATEVER MEANS ARE USED TO REALIZE IT, WHETHER IT IS USE OF THE TELEGRAPH, RADIO, OR TELEVISION, ETC."

SINCE THIS WAS MERELY DICTA, AND SINCE COURT DECISIONS IN CIVIL LAW COUNTRIES GENERALLY DO NOT HAVE THE PRECEDENTIAL EFFECT OF DECISIONS IN OUR COURTS, VESCO CAN BE EXPECTED TO RAISE THIS ARGUMENT AGAIN WITH REGARD TO 18 USC 1343.

THE DEPARTMENT'S EXPERIENCE WITH 1343 ELSEWHERE HAS BEEN MIXED. WE WON A 1343 CASE IN GHANA UNDER THE SAME TREATY PROVISIONS USED IN THE BAHAMAS, AND ANOTHER FORMER BRITISH DEPENDENCY HAS INDICATED IT WILL ENTERTAIN A WIRE FRAUD REQUEST. THERE WERE POSSIBLE POLITICAL MOTIVES IN THE GHANA DECISION HOWEVER, SINCE IT INVOLVED A FRAUD ON A NEIGHBORING AFRICAN GOVERNMENT. WE LOST A CASE IN NORWAY, BUT THE CASE WAS SO COMPLEX THAT THERE IS A FEELING THE COURT DID NOT UNDERSTAND THE INTRICACIES OF THE COMPLEX
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FINANCIAL AND CORPORATE STRUCTURE USED TO CARRY OUT THE FRAUD. WE HAVE WON MAIL FRAUD CASES IN CANADA, BUT ONLY AS TO CASES WHERE A MAILING HAS BEEN MADE IN THE UNITED

STATES, AS THE CORRESPONDING CANADIAN OFFENSE IS COMMITTED ONLY AT THE PLACE WHERE THE LETTER IS POSTED. MAIL FRAUD (18 USC 1341) IS A SIMILARLY-STRUCTURED STATUTE THAT DEPENDS ON DELIVERY VIA THE POSTAL SERVICE FOR JURISDICTION. WE HAVE NOT BROUGHT WIRE FRAUD CASES IN CANADA.

WITH REGARD TO 15 USC 78J(B), IT IS LESS CLEAR WHETHER VESCO CAN MAKE AN ARGUMENT THAT THE STATUTE IS NOT REALLY A FRAUD STATUTE. COURT DECISIONS ARE EXTENSIVE IN CALLING IT A FRAUD STATUTE. MOREOVER, THE STRUCTURE AND WORDING OF THE STATUTE IS DIFFERENT, AND IT DOES NOT FOCUS DIRECTLY ON THE USE OF FACILITIES OF INTERSTATE COMMERCE.

B. THE TREATY (ARTICLE 1) REQUIRES THAT THE CRIME MUST BE COMMITTED "WITHIN THE JURISDICTION OF ONE OF THE CONTRACTING PARTIES WHILE SAID PERSON WAS ACTUALLY WITHIN SUCH JURISDICTION." INTERPRETATION OF THIS PROVISION, I.E., WHETHER "JURISDICTION" EQUATES TO "TERRITORY" HAS BEEN DISCUSSED MANY TIMES WITH NO RESOLUTION. IF READ RESTRICTIVELY IT COULD REQUIRE US TO SHOW VESCO WAS PHYSICALLY WITHIN THE TERRITORIAL BOUNDARIES OF THE U.S. AT THE TIME OF THE OFFENSES. THE INDICTMENT IS NO AID WITH THIS

PROBLEM, SINCE IT ADDRESSES ITSELF ONLY TO THE FACTS TO ESTABLISH JURISDICTION OF THE U.S. COURTS (I.E., THE USE OF MEANS OF INTERSTATE COMMERCE) AND NOT TO ESTABLISH JURISDICTION UNDER THE TREATY.

THIS IS NOT UNCOMMON IN EXTRADITION, HOWEVER, IN MANY INSTANCES. FOR EXAMPLE, TREATIES USUALLY REQUIRE THAT OFFENSES BE BROUGHT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS, AND THAT THE EXTRADITION NOT BE FOR A POLITICAL OFFENSE. THESE REQUIREMENTS ARE MET THROUGH THE SUPPLEMENTARY DOCUMENTATION, WHICH USUALLY INCLUDES A LENGTHY AFFIDAVIT FROM A PROSECUTOR SETTING OUT THE APPROPRIATE STATUTES OF LIMITATIONS, AND ALSO ASSERTING UNDER OATH THAT THE EXTRADITEE IS NOT BEING SOUGHT FOR POLITICAL OFFENSES. THE PROBLEM OF VESCO'S PHYSICAL PRESENCE IN U.S. CAN BE CONFIDENTIAL

ADDRESSED IN THE SUPPLEMENTARY DOCUMENTATION. WE HAVE BEEN INFORMED THAT THE U.S. ATTORNEY CAN SUPPLY AN AFFIDAVIT STATING VESCO WAS IN THE U.S. FOR DAYS DURING THE PERIOD ADDRESSED IN THE INDICTMENT, PARTICULARLY DATES IN THE PERIOD JUNE-AUGUST 1972 AS VESCO HAS BEEN HIGHLY MOBILE, HE WAS NOT IN THE U.S. DURING ALL THE TIME COVERED BY THE INDICTMENT. WE ARE UNCERTAIN, HOWEVER, WHETHER VESCO'S PRESENCE IN THE UNITED STATES CAN BE ESTABLISHED ON DATES RELATED TO SPECIFIC ACTS ALLEGED.

C. DOCUMENTATION: THE FIRST ATTEMPT IN COSTA RICA WAS A PROVISIONAL ARREST REQUEST PURSUANT TO ARTICLE XI OF THE TREATY, AND A MAJOR LEGAL ISSUE BECAME INTERPRETATION OF DOCUMENTARY REQUIREMENTS IN A PROVISIONAL ARREST REQUEST. IT WAS NEVER RESOLVED TO OUR SATISFACTION, AND THEREFORE WE DO NOT REPEAT NOT CONTEMPLATE ANY PROVISIONAL ARREST AGAIN. IF WE DO DECIDE TO SEEK EXTRADITION WE WILL COME IN AT THE TIME OF REQUEST WITH ALL THE DOCUMENTATION DEEMED NECESSARY. HOWEVER, MEETING THE DOCUMENTARY REQUIREMENTS OF THE VESCO LAW IS AN IMPOSSIBILITY, AND THE COSTA RICANS MIGHT INTERPRET THE DOCUMENTARY REQUIREMENTS OF THE TREATY IN A WAY THAT WOULD BE EQUALLY AS BURDENSOME. THESE ISSUES WILL BE DISCUSSED IN THE SECTIONS TO FOLLOW.

5. EXTRADITION AND THE VESCO LAW - PROBLEMS AS WE SEE THEM:

ARTICLE I OF THE VESCO LAW STATES THAT WHERE THERE ARE EXTRADITION TREATIES "THEIR PROVISIONS SHALL APPLY TO THE EXTENT POSSIBLE" AND THAT IN "CASES OF DOUBT" AND "IN ALL CASES WITH REGARD TO TERMINOLOGY OR PROCEDURE, OR IN MATTERS FOR WHICH THE TREATIES DO NOT PROVIDE" THE PROVISIONS OF THE VESCO LAW SHALL BE FOLLOWED. ALMOST ALL

ATTEMPTS BY THE DEPARTMENT TO OBTAIN CLARIFICATION OF THIS AND OTHER PROVISIONS OF THE VESCO LAW HAVE NOT ELICITED SATISFACTORY ANSWERS. WITH THIS IN MIND, THE FOLLOWING ARE PARTS OF THE LAW THAT SIGNIFICANTLY IMPACT ON EXTRADITION REQUESTS AND THE TREATY.

A. ARTICLES 2 AND 9 OF THE VESCO LAW REQUIRE THAT CONFIDENTIAL

THE PERSON WHOSE EXTRADITION IS REQUESTED MUST HAVE BEEN WITHIN THE "TERRITORY" OF THE REQUESTING STATE AT THE TIME THE EXTRADITABLE CRIME WAS COMMITTED. AS "JURISDICTION" (THE TERM IN THE TREATY) CAN BE NON-TERRITORIAL, THE CONCEPT OF "TERRITORY" IN THE VESCO LAW APPEARS TO BE MORE RESTRICTIVE. AS STATED BEFORE, WE HAVE NOT BEEN PROVIDED ANY DOCUMENTATION BY WHICH WE CAN ASSESS THE IMPACT OF THESE PROVISIONS ON AN EXTRADITION REQUEST.

B. ARTICLE 2 OF THE VESCO LAW EXPANDS UPON THE POLITICAL OFFENSES EXCEPTION IN THE TREATY (ARTICLE III) TO PRECLUDE EXTRADITION WHEN THE PERSON REQUESTED FOR A COMMON OFFENSE IS "WELL AND PUBLICLY KNOWN" TO BE THE VICTIM OF PROSECUTION FOR POLITICAL MOTIVES, OR WHEN A COMMON OFFENSE "IS RELATED TO POLITICAL MATTERS AND PURSUES POLITICAL ENDS," OR WHEN THE PER-

SON REQUESTED MAY BE "JUDGED WITH BIAS," THE TREATY PROHIBITS EXTRADITION ONLY IF THE CRIME OR OFFENSE, OR ANY ACTS CONNECTED THERETO ARE OF A "POLITICAL (HARACTER." THE LAW PROVISION, HOWEVER, APPARENTLY COULD PRECLUDE EXTRADITION FOR A CLEARLY COMMON OFFENSE IF THE EXTRADITEE CAN ARGUE POLITICAL MOTIVES WHICH HAVE NO CONNECTION WITH THE OFFENSE. VESCO CAN BE EXPECTED TO ARGUE THIS.

C. ALSO LISTED IN ARTICLE 2 AS A BAR TO EXTRADITION IS A PROVISION NOT IN THE TREATY WHICH PRECLUDES EXTRADITION "WHEN, UNDER THE LAWS...OF THE REQUESTING STATE,...REGARDLESS OF (THE DURATION OF A PENALTY), IF THE POSSIBILITY OF A FINE IS PROVIDED FOR." VESCO COULD ARGUE THAT AS THIS WOULD APPEAR TO BE A MATTER FOR WHICH "THE TREATY DOES NOT PROVIDE, ACCORDING TO THE TERMS OF THE VESCO LAW IT IS A PROVISION WHICH "SHALL BE FOLLOWED." IF FOLLOWED LITERALLY, IT COULD DEFEAT AN EXTRADITION REQUEST AS BOTH STATUTES PROVIDE FOR THE POSSIBILITY OF A FINE IN ADDITION TO IMPRISON-MENT.

D. ARTICLE 4 SETS FORTH RATHER UNIQUE RULES WHICH "SHALL BE OBSERVED" IF A PREVIOUS EXTRADITION ATTEMPT CONFIDENTIAL

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HAS BEEN MADE, AND WHICH COULD DEFEAT ANOTHER REQUEST.

ARTICLE 4(B) PROVIDES:

ACTS OR OFFENSES WITH WHICH THE PERSON WHOSE EXTRADI-TION IS NEWLY SOUGHT IS CHARGED, WHICH WERE COMMITTED BEFORE THE PREVIOUS EXTRADITION REQUEST IN THE REQUESTING STATE, SHALL NOT BE ADMISSIBLE. THE ARTICLE PROVIDES, FURTHERMORE, THAT "ALL REQUESTS FOR EXTRADITION IN CONTRAVENTION OF THE PROVISIONS OF THIS ARTICLE SHALL BE REJECTED OUTRIGHT."

E. ARTICLE 9 PRESENTS ANOTHER OBSTACLE WITH BURDEN-SOME REQUIREMENTS REGARDING DOCUMENTATION. WHILE THE TREATY ADDRESSES THE DOCUMENTATION REQUIREMENT IN ARTICLES I AND XI, IT IS NOT SPECIFIC AS TO HOW MUCH DOCUMENTATION IS REQUIRED. NORMAL INTERNATIONAL PRACTICE REQUIRES ONLY ENOUGH DOCUMENTATION TO SHOW PROBABLE CAUSE TO BELIEVE THE ACCUSED COMMITTED THE CRIME. FOR EXAMPLE, COSTA RICA'S 1971 EXTRADITION LAW REQUIRED "REASONABLE PROOF" OF GUILT. THE VESCO LAW HOWEVER, STATES THAT A REQUESTING COUNTRY "MUST SUBMIT THE FOLLOWING DOCUMENTS."

(1) ALL THE EVIDENCE FOR THE PROSECUTION AND THE DEFENSE RECEIVED UP TO THE TIME THE EXTRADITION IS REQUESTED AND

(2) AN ATTESTATION TO THE EFFECT THAT THE REQUESTED PERSON WAS IN THE TERRITORY OF THE REQUESTING STATE AT THE TIME THE ALLEGED ACT WAS COMMITTED.

THE ARTICLE ENDS BY STATING THAT "ANY REQUEST...WHICH DOES NOT CONFORM TO THE REQUIREMENTS SET FORTH IN THIS ARTICLE SHALL BE REJECTED OUTRIGHT." OBVIOUSLY, THIS IS A PROVISION WITH WHICH WE CAN NOT POSSIBLY COMPLY. THE GRAND JURY PROCEEDINGS ALONE INVOLVED MORE THAN 60 WITNESSES AND 900 EXHIBITS. TRANSLATION OF ALL TESTIMONY AND EXHIBITS FOR SUBMISSION WOULD BE A MONUMENTAL TASK WHICH MIGHT CONCEIVABLY TAKE CONFIDENTIAL

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YEARS AND WHICH IS USELESS TO CONTE;PLATE.

6. EXTRADITION AND THE VESCO LAW - COMMENTS OF THE COSTA RICANS

A REVIEW OF THE DEPARTMENT'S FILES INDICATES THAT WE HAVE RECEIVED TWO WRITTEN MEMORANDUMS FROM THE COSTA RICANS ON THE EFFECTS OF THE VESCO LAW. OUR FIRST WRITTEN RESPONSE WAS IN REPLY TO QUESTIONS THAT HAD BEEN PRESENTED TO FIGUERES BEFORE THE VESCO LAW WAS PASSED. THE RESPONSE

WAS AN INFORMAL MEMORANDUM FROM THE THEN AC ING FOREIGN MINISTER SOLORZANO OF MARCH 23, 1973. THE SOLORZANO MEMORANDUM REJECTED ALL OF OUR CONCERNS, AND STATED THE SUPREMACY OF THE BILATERAL EXTRADITION TREATY OVER ORDINARY LEGISLATION.

AFTER THE VESCO LAW CAME INTO EFFECT, WE PRESENTED AN AIDE-MEMOIRE TO THE ODUBER GOVERNMENT ON JUNE 24, 1974. IT WAS ANSWERED BY A NOTE FROM THE FOREIGN MINISTRY ON APRIL 14, 1975. THE NOTE ALSO STRESSED THE SUPREMACY OF THE BILATERAL EXTRADITION TREATY.

IT SHOULD BE NOTED, HOWEVER, THAT, IN BOTH INSTANCES THE VIEWS EXPRESSED APPEAR TO BE THOSE OF THE FOREIGN MINISTRY AND NOT THE ATTORNEY GENERAL. ALSO AS THE EMBASSY POINTED OUT, THE APRIL 1975 MEMORANDUM DOES NOT APPEAR TO BE A FORMAL GOCR POSITION. THE SOLORZANO MEMORANDUM DOES APPEAR TO HAVE BEEN THE FORMAL GOCR POSITION AT THAT TIME, ALTHOUGH IT IS NOT REFERRED TO IN THE APRIL AID-MEMOIRE, AND APPEARS TO HAVE BEEN FORGOTTEN.

IN ADDITION TO THE MEMORANDUMS, UMANA'S COMMENTS TO ATTORNEY GENERAL TOSSI, WHICH WERE TRANSMITTED TO ODUBER ON SEPTEMBER 24, 1975 AND THEN TO US, APPEAR TO ADDRESS SOME OF THE ISSUES OF CONCERN TO US. THE SPECIFIC ISSUES WILL BE DISCUSSED BELOW:

A. THE PROBLEM WITH ARTICLE I OF THE LAW, WHICH CREATES AMBIGUITY AS TO WHETHER AND WHEN THE LAW OR THE TREATY PREVAILS: TO THIS, SOLORZANO'S MEMORANDUM STATES SIMPLY THAT CONFIDENTIAL

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THE TREATY TAKES PRECEDENCE OVER THE LAW. THE AIDE-MEMOIRE IS NO MORE ENLIGHTENING, STATING THAT THE TREATY WOULD GOVERN EXCLUSIVELY ALL "SUBSTANTIVE MATTERS" BUT THAT THE LAW WOULD APPLY WITH RESPECT TO "TERMINOLOGY AND PROCEDURES" NOT COVERED BY THE TREATY UNLESS A "SUBSTANTIVE" RULE OF THE TREATY WOULD BE INVALIDATED THEREBY.

B. THE PROBLEMS OF THE REQUIREMENTS OF ARTICLES 2 AND 9 REGARDING THE EXTRADITEE'S PRESENCE WITHIN THE "TERRITORY" OF THE REQUESTING STATE: THE SOLORZANO DRAFT IGNORED THE DIFFERENCE BETWEEN THE LAW CONCEPT OF "TERRITORY" AND THE TREATY CONCEPT OF "JURISDICTION" BY STATING THAT THE PROVISION IN THE LAW WAS CONSISTENT WITH AN ARTICLE WE HAD PROPOSED IN A NEW DRAFT TREATY (IN THIS REGARD, OUR DRAFT PROVISION IS MISINTERPRETED). THE APRIL AID-MEMOIRE NOTES THE DIFFERENT TERMINOLOGY AND STATES THAT THE VESCO LAW "DOES NOT LIMIT THE CAPACITY OF THE GOCR TO GRANT EXTRADITION" UNDER THE TREATY. "THIS STATEMENT IS NOT EXPLAINED,

SO WE DO NOT HAVE A DEFINITIVE STATEMENT THAT THE COSTA RICANS REGARD ONE CONCEPT AS NARROWER THAN THE OTHER. IT WAS CLEAR FROM OUR DISCUSSION WITH UMANA THAT HE CONSIDERED THE CONCEPTS OF "JURISDICTION" AND "TERRITORY" TO BE THE SAME.

C. THE PROVISION IN ARTICLE 2(7) PROHIBITING EXTRADITION IF THE POSSIBILITY OF A FINE IS PROVIDED FOR: THE SOLORZANO RESPONSE DID NOT ADDRESS THIS POINT. THE APRIL AIDE-MEMOIRE STATES THAT THE RULE CONTAINED IN ARTICLE 2(7) CANNOT BE APPLIED TO INVALIDATE AN EXTRADITION WHICH WOULD BE PROPER UNDER ARTICLE II OF THE TREATY SINCE THE TREATY IS SUPREME. IT WOULD APPEAR THAT THE AIDE-MEMOIRE IS STATING THAT THIS INVOLVES A MATTER OF SUBSTANCE AND THAT THE TREATY PREVAILS.

D. THE PROVISIONS OF ARTICLE 4 PROHIBITING EXTRADITION FOR ANY OFFENSE COMMITTED BEFORE AN EARLIER EXTRADITION ATTEMPT: THE SOLORZANO MEMORANDUM AVOIDED THE ISSUE

DIRECTLY, ASSERTING ONLY THAT ALL CHARGES PENDING AGAINST A PERSON SHOULD BE SUBMITTED AT ONE TIME, AND THAT A REQUESTING STATE SHOULD "NOT LEAVE PENDING THE POSSIBILITY
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OF SUBMITTING NEW REQUESTS, ACCORDING TO THE RESULTS OF THE PREVIOUS ONES, IF THE ALLEGED ACTS HAD ALREADY BEEN PROSECUTED." THE APRIL AIDB-MEMOIRE, SIMILARLY, ADDRESSES THE ISSUE OF A NEW REQUEST ON THE BASIS OF THE SAME FACTS USED IN A PREVIOUS REQUEST, AND DOES NOT ADDRESS AT ALL THE ISSUE WHICH IS OUR CONCERN.

E. THE PROBLEM ABOUT THE DOCUMENTATION NECESSARY FOR A REQUEST: THE SOLORZANO MEMORANDUM DID NOT ADDRESS THIS. THE APRIL AIDE-MEMO.RE AGAIN AVOIDS A DEFINITIVE DIRECT ANSWER, NOTING ONLY THAT THE PROVISIONS OF THE LAW GO "NO FURTHER" THAN THE PROVISIONS OF ARTICLE I OF THE TREATY WHICH REQUIRE THAT "PROOFS OF GUILT" CONFORM TO THE LAWS OF THE COUNTRY IN WHICH THE ACCUSED IS FOUND. THE ENGLISH TRANSLATION OF ARTICLE I REQUIRES "SUCH EVIDENCE OF CRIMINALITY, AS ACCORDING TO THE LAWS OF THE PLACE WHERE THE FUGITIVE...SHALL BE FOUND, WOULD JUSTIFY HIS APPREHENSION AND COMMITMENT FOR TRIAL IF THE CRIME OR OFFENSE HAD BEEN THERE COMMITTED." ALSO, ARTICLE XI STATES THAT IF EXTRADITION IS REQUESTED FOR A PERSON CHARGED WITH A CRIME, THE DOCUMENTATION SHALL INCLUDE THE WARRANT OF ARREST AND "THE DEPOSITIONS UPON WHICH SUCH WARRANT MAY HAVE BEEN ISSUED...WITH SUCH OTHER EVIDENCE OR PROOF AS MAY BE DEEMED COMPETENT IN THE CASE."

UNDER NORMAL INTERNATIONAL PRACTICE, DOCUMENTATION IS USUALLY ONLY ENOUGH TO SHOW A "PRIMA FACIE CASE," TO SHOW

REASONABLE GROUND" TO BELIEVE THE ACCUSED COMMITTED THE OFFENSE, OR EVIDENCE TO SHOW "PROBABLE CAUSE" THAT THE ACCUSED COMMITTED THE OFFENSE. EVIDENCE NECESSARY UNDER ALL THE CRITERIA STATED ABOVE FALLS CONSIDERABLY SHORT OF "ALL" THE EVIDENCE, PARTICULARLY SINCE AN EXTRADITION PROCEEDING IS NOT IN THE NATURE OF A FINAL TRIAL BY WHICH THE ACCUSED CAN BE CONVICTED. COSTA RICA'S 1971 EXTRADITION LAW SEEMED TO RECOGNIZE INTERNATIONAL PRACTICE WITH ITS REQUIREMENT OF "REASONABLE PROOF" OF GUILT.

WE DO NOT INTERPRET TREATY PROVISIONS TO REQUIRE ALL DOCUMENTATION, BUT ONLY DOCUMENTS SUFFICIENT TO SHOW PROBABLE CAUSE, TOGETHER WITH ADDITIONAL EXPLANATORY AFFIDAVITS.
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THE COSTA RICANS, HOWEVER, HAVE NOT INFORMED US WHAT IS "NECESSARY EVIDENCE OF CRIMINALITY" UNDER THEIR LAW, AND CONCEIVABLY COULD ARGUE THAT THE TREATY REQUIRES PRODUCTION OF ALL DOCUMENTATION, AND THAT ARTICLE 9 OF THE VESCO LAW MERELY REPEATS THE TREATY PROVISIONS.

F. THE PROVISIONS REGARDING POLITICAL OFFENSES: THE SOLORZANO MEMORANDUM REJECTED OUR OBJECTIONS, ASSERTING THAT ALL PROVISIONS CONFORMED TO THE SOUNDEST PRINCIPLES OF INTERNATIONAL LAW. THE APRIL AIDE-MEMOIRE STATES THAT THE PROVISIONS ARE IN ACCORD WITH THE TREATY. ALSO, UMANA REJECTED OUR PROPOSAL FOR REDRAFTING OF THE POLITICAL OFFENSES PROVISION, ASSERTING THAT, WITH THE PRESENT OR ANY OTHER DRAFT, ONE WOULD STILL ALWAYS HAVE TO APPLY ARTICLE III OF THE TREATY.

7. OPTIONS--GIVEN THE PROBLEMS INHERENT IN ANY EXTRADITION REQUEST, IT IS EXTREMELY IMPORTANT THAT THE MANNER IN WHICH SUCH A REQUEST IS APPROACHED BE CAREFULLY ASSESSED. THERE ARE SEVERAL TACTICAL OPTIONS OPEN. THE EMBASSY'S COMMENTS ON THE FOLLOWING AND ANY ADDITIONAL SUGGESTIONS WOULD BE APPRECIATED:

OPTION A--GO FORWARD WITH A FULLY PREPARED CASE REQUESTING EXTRADITION WITHOUT ANY PRIOR CONSULTATION WITH THE GOCR. THIS OPTION WOULD ENVISION OMITTING THE PROVISIONAL ARREST STEP. IT WOULD STILL BE NECESSARY TO PRESENT THE FORMAL REQUEST THROUGH THE FOREIGN MINISTRY. IN THIS CONNECTION, IS THE EMBASSY AWARE OF ANY TIME CONSTRAINT ON THE FOREIGN MINISTRY FOR TRANSMITTING OUR REQUEST TO THE PENAL AUTHORITIES FOR PRESENTATION TO THE COURT?

OPTION B--SET FORTH OUR CASE BEFORE PRESIDENT ODUBER AND/OR FACIO. STATE THAT WE WILL BE REQUESTING

EXTRADITION AND THAT WE BELIEVE THAT WE HAVE A WINNING CASE UNDER THE TREATY. FURTHER STATE THAT WE ARE CONCERNED ABOUT THE VESCO LAW BUT THAT WE HAVE DECIDED TO PURSUE OUR REQUEST BECAUSE OF ASSURANCES PREVIOUSLY GIVEN BY ODUBER AND FACIO. WE CONFIDENTIAL

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MIGHT EVEN REQUEST THAT FACIO TESTIFY BEFORE THE COURT AS TO THE PRECEDENCE OF THE TREATY OVER THE LAW.

OPTION C--MOVE TO GET A NEW TREATY IN FORCE BEFORE THE END OF THE YEAR. THIS WOULD INVOLVE REVIEWING

AND POSSIBLY MODIFYING THE TREATY WE PROPOSED TWO YEARS AGO. ODUBER WOULD BE REQUESTED TO INSTRUCT THE FOREIGN MINISTRY TO COOPERATE IN EXPEDITING NEGOTIATIONS.

OPTION D--CONSULT FIRST WITH ODUBER OR FACIO AND FOLLOW THEIR SUGGESTIONS. KISSINGER

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